

## **416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.**

RELATES TO: KRS 146.080-146.121, 224.71-100-224.71-140, Chapter 262

STATUTORY AUTHORITY: KRS 146.110-146.121

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 to 146.121 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. The fund provides cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for such purposes as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; and reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program.

Section 1. Definitions. (1) "Agricultural or silvicultural production" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.

(2) "Agriculture water quality plan" means a document incorporating the conservation plan, compliance plan, or forest stewardship management plan as necessary to prevent groundwater and surface water pollution from an agricultural or silvicultural production.

(3) "Applicant" means a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(4) "Available funds" means moneys budgeted, unobligated and approved by the commission for cost-share assistance.

(5) "Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service and the Soil and Water Conservation Commission. Best management practices shall establish a minimum level of acceptable quality for planning, siting, designing, installing, operating, and maintaining these practices.

(6) "Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.

(7) "Compliance plan" means a conservation plan containing best management practices developed for persons engaged in agricultural production by the United States Department of Agriculture Natural Resources Conservation Service in conjunction with local conservation districts as required for eligibility under the Federal Food Security Act.

(8) "Conservation district" or "district" means a subdivision of state government organized pursuant to KRS Chapter 262 for the specific purpose of assisting persons engaged in agricultural or silvicultural production and land users in solving soil and water resources problems, setting priorities for conservation work to be accomplished, and coordinating the federal, state, and local resources to carry out these programs.

(9) "Conservation plan" means a plan describing best land management practices, including an installation schedule and maintenance program, which when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land in accordance with the

Natural Resources Conservation Service Technical Guide or developed by others in accordance with the Natural Resources Conservation Service Technical Guide and in cooperation with a conservation district.

(10) "Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(11) "District supervisor" means a member of the governing board of a conservation district.

(12) "Ecosystem-based assistance process" means a specific application of a planning process that considers the integration of ecological, economic, and social factors to maintain and to enhance the quality of the environment to best meet current and future needs, which may include the following components:

(a) Inclusion of private land and public land within the watershed;

(b) Identification of and suggested solutions for various resource problems within the watershed;

(c) Establishment of opportunities for public participation in plan development and implementation;

(d) Inclusion of mechanisms for developing a comprehensive resource plan for the watershed and for reporting conservation accomplishments within the watershed;

(e) Identification and prioritization of local resource concerns, and inclusion of mechanisms to address these concerns within the watershed; and

(f) Development within current county conservation district boundaries with coordination of plans across county lines for protection of the watershed.

(13) "Eligible land" means land on which agricultural or silvicultural production is being conducted.

(14) "Eligible person" means a person eligible to apply for cost-share assistance.

(15) "Eligible practices" means those best management practices that have been approved by the commission.

(16) "Forest stewardship management plan" means a plan developed by the Environmental and Public Protection Cabinet's Division of Forestry or other cooperating entities which establishes practices for a person engaged in an agricultural or silvicultural production to manage forest lands in accordance with sound silvicultural and natural resource principles.

(17) "Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.

(18) "Obligated funds" means moneys from a district's portion of the Kentucky Soil Erosion and Water Quality Cost-share Fund allocated by the commission and committed to an applicant after final approval of the application for cost-share assistance.

(19) "Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.

(20) "Program year" means the period from July 1 to June 30.

(21) "Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.

(22) "Surface water" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger shall not be considered to be surface waters of the Commonwealth.

(23) "Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.

(24) "Watershed" means all the area from which all drainage passes a given point downstream.

Section 2. Eligibility of Persons. (1) Eligible persons. Persons conducting agricultural or silvicultural production are eligible to receive cost-share assistance for best management practices if the following conditions are met:

(a) The person has had prepared a conservation plan, a compliance plan, a forest management or forest stewardship plan, or an agriculture water quality plan; and

(b) The person agrees to perform and to maintain best management practices for the period of time specified by the commission.

(2) Ineligible persons. A person engaged in agricultural or silvicultural production who has failed or refused to comply with agriculture water quality planning requirements and has been deemed a "bad actor" under KRS 224.71-130 shall lose eligibility for further cost-share assistance.

Section 3. Eligible Best Management Practices. (1) Purposes of best management practices. The Kentucky Soil Erosion and Water Quality Cost-share Funds shall be used to provide cost-share assistance for development and implementation of best management practices for the following purposes:

(a) Providing cleaner water through the reduction in sediment loading of Kentucky streams, rivers, and lakes;

(b) Reducing the loss of topsoil vital to sustain production of food and fiber; and

(c) Preventing surface water and groundwater pollution.

(2) Approved best management practices. Complete listings of eligible best management practices are contained in the document entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual", incorporated by reference in Section 13 of this administrative regulation.

(3) A district may request the commission's approval of best management practices not included in the commission's list of approved practices if those best management practices solve a problem unique to the requesting district and conform to one or more of the purposes listed in subsection (1) of this section. A request shall be filed in writing with the commission in time for the commission to review the request and to notify the district of its decision prior to the advertisement of the program for the next program year. Conservation practices may be included in a district's list of eligible practices offered for cost-share assistance only if approved by the commission in accordance with this subsection.

Section 4. Solicitation of Applications. The commission shall establish for each program year a deadline for submittal of applications for cost-share assistance. Each conservation district shall provide an opportunity for persons within the district to submit applications in time for the next program year by advertising the availability of cost-share assistance in appropriate news media, such as local newspapers, local radio stations, and any newsletters published by the district.

Section 5. Contents and Completion of Applications. (1) Contents of application. An applicant shall submit to the conservation district in which the eligible land is located the application incorporated by reference in Section 13 of this administrative regulation in order to apply for cost-share assistance. The applicant shall append to the application:

(a) Any conservation plan, compliance plan, forest stewardship plan, or agriculture water quality plan in effect for the eligible land; and

(b) If known to the applicant or as made in consultation with the appropriate technical agency, the anticipated total cost of the best management practice to be implemented and the percentage, if any, of the cost which the applicant proposes to bear, which percentage shall not be less than minimums established by the commission for the particular best management practice.

(2) Completion of applications. An applicant who does not have a conservation plan, compliance plan, forest stewardship plan, or agriculture water quality plan in effect for the eligible land; or who

has not determined the anticipated total cost of the requested best management practice may request technical assistance from the conservation district in developing a best management practices plan and determining costs. When the best management practices plan has been developed and the anticipated total cost determined, the application will be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

**Section 6. Review of Applications.** Each conservation district shall review and determine the eligibility of all applications which were submitted to the district by the established deadline. The board of supervisors for the district shall vote upon eligibility at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 to 61.850, and record the outcome in the minutes of the board of supervisors for that meeting. A district supervisor who is also an applicant for cost-share assistance shall not vote on eligibility. The district shall forward the applications to the commission within fifteen (15) days after determining eligibility. A district may submit both individual applications for eligible lands within the district and watershed-based applications for eligible lands within the district.

**Section 7. Prioritization of Applications.** The commission shall prioritize the applications of persons determined by the conservation districts to be eligible for cost-share assistance and shall make the final award of cost-share assistance.

(1) Classification of priorities. Applications shall be prioritized based on the following criteria:

(a) Applicants conducting agricultural or silvicultural production needing animal waste management systems where animal waste has been identified by the Environmental and Public Protection Cabinet as a water pollution problem;

(b) Applicants who are members of agricultural districts; and

(c) Applicants who have implemented a conservation plan, a compliance plan, an agriculture water quality plan, or a forest stewardship plan, and are part of a watershed where the ecosystem-based assistance process is ongoing.

(2) Applications within each classification identified in subsection (1) of this section shall be prioritized based on the following criteria:

(a) Presence of water pollution, based on:

1. Notification by a local, state or federal agency that the applicant's agricultural or silvicultural production has caused or contributed to water pollution;

2. Determination of the Environmental and Public Protection Cabinet that a surface water affected by the applicant's agricultural or silvicultural production is not meeting its designated use;

3. Identification by the Environmental and Public Protection Cabinet of a water priority protection region encompassing the location of the applicant's agricultural or silvicultural production; and

4. Other documentation of water pollution, such as through a biological assessment; or

5. Potential for development of water pollution from agricultural or silvicultural production in the watershed in which the applicant's agricultural or silvicultural production is being conducted.

(b) Types of water pollutants, based on:

1. Animal waste;

2. Sediment run-off;

3. Nutrient loading; or

4. Pesticide application, storage or disposal.

(c) Proximity of pollutant to groundwater or surface water;

(d) Magnitude of water pollution; and

(e) Location in designated water quality planning area, based on the existence of:

1. An ecosystem-based assistance process;

2. A Federal Clean Water Act Section 319 demonstration area;

3. A wellhead protection area; or

#### 4. An agriculture water priority protection region.

Section 8. Allocation of Cost-share Assistance. (1) The available funds received by the commission for the cost-share program shall be allocated to the conservation districts based on requests from districts approved by the commission prior to each program year. The district shall receive a share of the Kentucky Soil Erosion and Water Quality Cost-share Fund based on the commission's approval of an initial district request based on the objectives identified in Section 8 of this administrative regulation, and in accordance with the prioritization system established in Section 7 of this administrative regulation.

(2) Any funds allocated by the commission to a district for a program year shall revert to the commission if the district has not obligated the funds within one (1) year from allocation.

(3) The commission shall retain ten (10) percent of the available funds in a contingency fund to be allocated to assist persons engaged in agricultural or silvicultural productions and implementing the agriculture water quality program mandated by KRS 224.71.

Section 9. Design of Best Management Practices. Once cost-share assistance has been awarded by the commission, the local district shall designate a technician to develop final design and layout for the approved best management practices.

Section 10. Execution of Performance and Maintenance Agreements. After an application has been awarded cost-share assistance and before the applicant has received payment of the cost-share funds, the applicant and the conservation district shall execute a performance and maintenance agreement.

(1) Requirements of performance and maintenance agreements. The performance and maintenance agreement shall require the applicant to meet the following requirements:

(a) The applicant shall agree to perform those best management practices approved in accordance with this administrative regulation;

(b) The applicant shall agree to maintain approved best management practices for the expected life of each practice agreed upon in the performance and maintenance agreement;

(c) Upon completion of the approved best management practice the applicant shall notify the district that the practice has been installed and shall provide to the district for its inspection all vouchers, bills, and receipts associated with the practice;

(d) The applicant shall agree that at the time of transfer of ownership of land where a best management practice has been applied using cost-share assistance and the expected life assigned the practice has not expired, the applicant shall execute a contract with the transferee requiring continuation of those practices until completed;

(e) The applicant shall agree that if the applicant destroys the best management practice installed or voluntarily relinquishes control or title to the land on which the installed practice has been established and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of its specified lifespan, the applicant shall refund all or part of the cost-share assistance, as determined by the district; and

(f) The applicant shall agree that if the applicant does not maintain the approved best management practices on the schedule provided in the plan the applicant shall forfeit the cost-share assistance, and the commission shall be authorized to recover the funds disbursed.

(2) Effect of performance and maintenance agreement. Requirements for performance and maintenance of best management practices applied using cost-share assistance shall be established in the performance and maintenance agreement and reviewed with the applicant at the time of application submittal and before completion of a certification of practices.

(3) Refund of funds disbursed. The district may require a refund of cost-share assistance when

an approved best management practice has not been performed or maintained in compliance with approved design standards and specifications for the practice during its expected life as agreed in the performance and maintenance agreement.

(4) Application for future cost-share assistance. Best management practices that have been successfully completed and which later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, shall not prohibit the applicant from applying for additional cost-share assistance to restore the practices to their original design standards and specifications.

(5) Certification. Upon notification by the applicant that the approved best management practice has been completed and before disbursement of funds from the district, the appropriate technical agency shall certify to the district that the practice has been installed in accordance with the document entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual," incorporated by reference in Section 13 of this administrative regulation.

(6) Limitations on awards. Cost-share assistance awarded to an applicant shall be limited to a maximum of seventy-five (75) percent of the actual cost, not to exceed an amount approved by the commission, for each best management practice, with the assisted applicant providing twenty-five (25) percent of the cost, which may include in-kind support, with a maximum of \$7,500 per year to each applicant for all practices except for the more expensive animal waste storage practices which have a maximum of \$20,000 per year for each applicant. Cost-share assistance may be used with federal or local cost-share funds on the same practices as long as the total cost share payment does not exceed seventy-five (75) percent of the practice cost. Cost-share assistance shall not be awarded to best management practices in progress prior to cost-share approval or previously-installed practices by the applicant.

Section 11. Reporting and Accounting. (1) District reporting and accounting. A district shall conduct the following reporting and accounting procedures:

(a) Maintain a control ledger showing the current request to the commission and cost share funds obligated for approved applications, based on estimated cost;

(b) Submit a quarterly report to the commission indicating the unobligated balance of allocated and disbursed cost-share funds as shown on each ledger;

(c) Submit an annual progress report to the commission showing accomplishments "to date" for the current program year; and

(d) Assemble case files for each approved application, filed by program year and accessible for public inspection, containing:

1. The approved application for allocated funds;
2. A copy of the estimated cost sheet;
3. Certification of practice completion;
4. Applicant's vouchers, bills or receipts;
5. Final designs for best management practices;
6. The performance and maintenance agreement;
7. Any amendments to the performance and maintenance agreement; and
8. A map locating the practices.

(2) Commission reporting and accounting. The commission shall conduct the following reporting and accounting procedures:

(a) Receive and maintain reports from districts showing the unobligated balance of allocated and disbursed cost share funds as shown on each ledger; and

(b) Submit consolidated quarterly reports based on the reports from districts on the unobligated balance of the Kentucky Soil Erosion and Water Quality Cost-share Fund.

Section 12. Appeals. (1) Procedure for filing appeal. An applicant aggrieved by a decision of the

commission denying an application or limiting the amount of financial assurance may file a written appeal with the commission within thirty (30) days of the decision and shall set forth the basis for the appeal.

(2) Procedure for hearing appeal. The commission shall notify the applicant and the local district that they may appear before the commission and present testimony or written documentation on the issues presented by the appeal. The commission shall have sixty (60) days in which to make a decision and to notify the local district and the applicant.

(3) Review of final decision. The decisions of the commission may be appealed to the Franklin Circuit Court.

Section 13. Incorporation by Reference. The documents entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual", dated March 1, 1995 is hereby incorporated by reference. It is available for public inspection and copying, subject to copyright law, at the office of the Soil and Water Conservation Commission, 691 Teton Trail, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m., Mondays through Fridays, excluding state holidays. (22 Ky.R. 142; eff. 8-24-95; TAm eff. 8-9-2007.)